

1 Jeffrey Topor (CA Bar No. 195545)
jtopor@snllp.com
2 Sarah H. Scheinhorn (CA Bar No. 294759)
sscheinhorn@snllp.com
3 Simmonds & Narita LLP
4 44 Montgomery Street, Suite 3010
San Francisco, CA 94104
5 Phone: (415) 283-1000
Fax: (415) 352-2625
6

7 Alan D. Leeth (CA Bar No. 199226)
Burr & Forman LLP
8 420 North 20th Street
Suite 3400
9 Birmingham, AL 35203
Phone: (205) 458-5499
10 Fax: (205) 244-5670
11 E-mail: aleeth@burr.com

12 *Attorneys for Plaintiff*
13

14 UNITED STATES DISTRICT COURT FOR THE
15 NORTHERN DISTRICT OF CALIFORNIA
16

17)
18 HONG KONG ORIENTAL IMPORT AND)
EXPORT CO. LTD.)

19)
20 Plaintiff,)

21)
22 v.)

23 CAL PACIFIC LIMITED INC.)

24 Defendant.)
25)
26)
27)
28)

Case Number: C 15-00273 JSC

DECLARATION OF JEFFREY A. TOPOR
IN SUPPORT OF PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT

1 I, Jeffrey A. Topor, declare as follows:

- 2 1. I am a partner of the firm Simmonds & Narita LLP, located in San Francisco,
3 California, counsel of record for plaintiff Hong Kong Oriental Import and Export Co.
4 Ltd. ("Plaintiff"). I make this declaration in support of Plaintiff's Motion for Entry of
5 Default Judgment. I have personal knowledge of the facts set forth below, and if
6 called as a witness, I could and would testify competently thereto.
7
- 8 2. I am familiar with the file, records, and pleadings in this matter.
- 9 3. A copy of the summons and complaint was served on the defendant's registered agent
10 for service of process on March 17, 2015.
- 11 4. Proof of service was filed with this Court on March 19, 2015. *See* Doc. No. 10.
- 12 5. Defendant has not answered or otherwise defended in this action, and the time within
13 which defendant may do so has expired.
- 14 6. Default was entered against Defendant on April 13, 2015. *See* Doc. No. 13.
- 15 7. As set forth in Plaintiff's Complaint, Plaintiff's claim is for the sum of \$3,519,918.00
16 plus interest from the date of judgment, as provided by law, together with the costs of
17 this action. *See* Doc. No. 1 at ¶¶ 23, 24, 26, 29. Attached hereto as **Exhibits A, B**
18 **and C** are true and correct copies of the contracts upon which Plaintiff's claim is
19 based. *See also* Doc. No. 1 at Exs. A-C.
20
21
22

23 DATED: April 17, 2015

s/Jeffrey A. Topor

24 Jeffrey A. Topor
25
26
27
28

Exhibit A

SALES CONTRACT

NO: CP51123

DATE : APRIL 27, 2014

CAL PACIFIC LIMITED801 TRAEGER AVE., SUITE 115
SAN BRUNO, CA 94066



Buyer Information		Notify Party	
Contact Person :	MR. XU OF LIN'AN		
Company Name :	DONGSHENG TRADE COMPANY	Company Name :	TO BE ADVISED
Commodity Information			
PRODUCT DETAILS:	ALMONDS INSHELL - 2014 CROP	PRICE :	\$2.54/LB CFR HAIPHONG
QUALITY :	NONPAREIL INSHELL		SLIDING SCALE, BASIS 70%
QUANTITY :	30 X 40 FT CONTAINERS (1,350,000 LBS)		MINIMUM 67%, MAXIMUM 74%
PACKAGING :	900 X 50 LB BAGS PER 40 FT CONTAINER		
SEPTEMBER / OCTOBER 2014 SHIPMENT			
Payment Terms			
1.) \$8,000 PER CONTAINER DEPOSIT FOR 30 X 40 FT CONTAINERS OR TOTAL USD \$240,000 TO BE PAID NO LATER THAN MAY 5, 2014			
2.) BALANCE BY T/T BEFORE VESSEL ARRIVAL INTO HAIPHONG			
Documents			
• COMMERCIAL INVOICE		• USDA INSPECTION CERTIFICATE	
• OCEAN BILL OF LADING		• CERTIFICATE OF ORIGIN	
• PHYTOSANITARY CERTIFICATE		• WEIGHT CERTIFICATE	
• PACKING LIST		• FUMIGATION CERTIFICATE	
Notice to the buyer			
<p><i>Seller shall not be liable for delay, Default or Impossibility of performance due to any act of God, Riots, Strike, Floods, or any act beyond its control. This contract is made in duplicate, one copy of which shall be signed by the buyer and returned to the seller immediately. Failure to do so and the buyer's retention of the contract shall constitute an acceptance by the buyer of the terms and conditions herein.</i></p>			
BUYER SIGNATURE		CAL PACIFIC LIMITED	
			

Exhibit B

SALES CONTRACT

NO: CP51127

DATE : APRIL 30, 2014

CAL PACIFIC LIMITED801 TRAEGER AVE., SUITE 115
SAN BRUNO, CA 94066



Buyer Information		Notify Party			
Contact Person :	MR. XU OF LIN'AN	Contact Person :	MR. LIU HUA ZHONG		
Company Name :	DONGSHENG TRADE COMPANY	Company Name :	THEIN AN TRADING EXPORT IMPORT		
			JOINT STOCK COMPANY		
			567LE THANH TONG STREET		
			NGO QUYEN DISTRICT, HAIPHONG CITY		
			VIETNAM		
			TEL: (0084) 31 3614776		
			FAX: (0084) 31 3614775		
Commodity Information					
PRODUCT DETAILS :	ALMONDS INSHELL - 2014 CROP	PRICE :	\$2.53/LB CFR HAIPHONG		
QUALITY :	NONPAREIL INSHELL		SLIDING SCALE, BASIS 70% MEAT YIELD		
QUANTITY :	30 X 40 FT CONTAINERS (1,350,000 LBS)		MINIMUM 68% TO MAXIMUM 74%		
PACKAGING :	900 X 50 LB BAGS PER 40 FT CONTAINER				
Shipping Information					
SPREAD SHIPMENT - OCTOBER THROUGH DECEMBER 2014 SHIPMENT					
Payment Terms					
1.) \$8,000 PER CONTAINER DEPOSIT FOR 30 X 40 FT CONTAINERS OR TOTAL USD \$240,000 TO BE PAID NO LATER THAN MAY 5, 2014					
2.) BALANCE BY T/T BEFORE VESSEL ARRIVAL INTO HAIPHONG					
Documents					
• COMMERCIAL INVOICE		• USDA INSPECTION CERTIFICATE			
• OCEAN BILL OF LADING		• CERTIFICATE OF ORIGIN			
• PHYTOSANITARY CERTIFICATE		• WEIGHT CERTIFICATE			
• PACKING LIST		• FUMIGATION CERTIFICATE			
Notice to the buyer					
Seller shall not be liable for delay, Default or Impossibility of performance due to any act of God, Riots, Strike, Floods, or any act beyond its control. This contract is made in duplicate, one copy of which shall be signed by the buyer and returned to the seller immediately. Failure to do so and the buyer's retention of the contract shall constitute an acceptance by the buyer of the terms and conditions herein.					
BUYER SIGNATURE		CAL PACIFIC LIMITED			
					

Exhibit C

SALES CONTRACT

NO: CP51130

DATE : MAY 9, 2014

CAL PACIFIC LIMITED801 TRAEGER AVE., SUITE 115
SAN BRUNO, CA 94066

Buyer Information		Notify Party	
Contact Person :	MR. XU OF LIN'AN	Contact Person :	MR. LIU HUA ZHONG
Company Name :	DONGSHENG TRADE COMPANY	Company Name :	THEIN AN TRADING EXPORT IMPORT
			JOINT STOCK COMPANY
			567LE THANH TONG STREET
			NGO QUYEN DISTRICT, HAIPHONG CITY
			VIETNAM
			TEL: (0084) 31 3614776
			FAX: (0084) 31 3614775
Commodity Information			
PRODUCT DETAILS :	ALMONDS INSHELL - 2014 CROP	PRICE :	\$2.58/LB CFR HAIPHONG
QUALITY :	NONPAREIL INSHELL		SLIDING SCALE, BASIS 70% MEAT YIELD
QUANTITY :	30 X 40 FT CONTAINERS (1,350,000 LBS)		MINIMUM 67% TO MAXIMUM 74%
PACKAGING :	900 X 50 LB BAGS PER 40 FT CONTAINER		
Shipment Information			
NOVEMBER / DECEMBER 2014 SHIPMENT			
TO PROVIDE CONTAINER INSURANCE FOR 30 X 40 FT CONTAINERS, INSURANCE EXPENSE FOR 30 CONTAINERS TO BE PAID BY BUYER			
Payment Terms			
1.) \$8,000 PER CONTAINER DEPOSIT FOR 30 X 40 FT CONTAINERS OR TOTAL USD \$240,000 TO BE PAID AT TIME OF CONTRACT SIGNING			
2.) BALANCE BY T/T BEFORE VESSEL ARRIVAL INTO HAIPHONG			
Documents			
• COMMERCIAL INVOICE		• USDA INSPECTION CERTIFICATE	
• OCEAN BILL OF LADING		• CERTIFICATE OF ORIGIN	
• PHYTOSANITARY CERTIFICATE		• WEIGHT CERTIFICATE	
• PACKING LIST		• FUMIGATION CERTIFICATE	
• INSURANCE CERTIFICATE			
Notice to the buyer			
Seller shall not be liable for delay, Default or impossibility of performance due to any act of God, Riots, Strike, Floods, or any act beyond its control. This contract is made in duplicate, one copy of which shall be signed by the buyer and returned to the seller immediately. Failure to do so and the buyer's retention of the contract shall constitute an acceptance by the buyer of the terms and conditions herein.			
BUYER SIGNATURE		CAL PACIFIC LIMITED	
